| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| Attach #1 SOW, page 7 of 18, Addendum #3 | 9. Software Provisions<br><br>(a) Platform Software<br><br>These provisions apply to generally available Platform Software included in the completed VoteCal system. Platform software shall mean products that perform the following functions:<br><br>• operating system,<br>• database management,<br>• message switching,<br>• backup/restore,<br>• security,<br>• access control,<br>• encryption,<br>• intrusion prevention,<br>• performance monitoring,<br>• troubleshooting,<br>• source code compilation and run-time libraries ,<br>• debugging,<br>• storage management tools, and<br>• any other system component which is commercially available through multiple resellers, that has not been modified for use in the VoteCal and/or VoteCal EMS systems, and for which configuration is within manufacturer's published, customer-configurable options.<br><br>These provisions do not apply to any portion of the VoteCal Application Software and VoteCal EMS Application Software developed or otherwise provided to the State under this Contract. | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (i) License Grant<br><br>a) The State shall license all Platform Software Products directly from the publishers of those products. The State's acceptance and use of Platform Software Products shall be governed by the terms and conditions of the end user license agreement offered by the publisher of the Platform Software product. If the terms of such license are unacceptable to the State, Contractor shall use good faith efforts to obtain terms acceptable to the State from the Platform Software provider. If Contractor is unable to obtain terms acceptable to the State, Contractor shall work with the State to identify alternative Platform Software products that the State can obtain pursuant to terms and conditions acceptable to the State. In no event shall Contractor's inability to obtain license terms for Platform Software products that are acceptable to the State, following good faith efforts to obtain such terms, constitute a breach of this Agreement by Contractor. ~~Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use, modify and copy Platform Software as outlined below (hereinafter referred to as Platform Software).~~<br><br>b) ~~State may use the Platform Software in the conduct if its own business and, and any division thereof.~~<br><br>c) ~~The license granted above authorizes the State to use the Platform Software in machine-readable form on the Commercial Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Platform Software in machine-readable form, on any other State CPU until the designated CPU is returned to operation. The license~~ | Reject change: SOS intends to take possession of the complete system from the system integration contractor upon acceptance and payment. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | ~~herein granted shall also be temporarily extended to authorize the State to use the Platform Software, in machine-readable form, on any other state CPU for up to 7 days per calendar year to allow the state to test the ability to operate in the event that the designated CPU is inoperative, and to facilitate system maintenance.~~<br><br>~~d)    By prior written notice, the State may redesignate the CPU in which the Software are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.~~<br><br>~~(ii)    Encryption/CPU ID Authorization Codes~~<br><br>~~a)    When Encryption/CPU Identification (ID) authorization codes are required to operate the Platform Software, the Contractor will provide all codes to the State with delivery of the Software.~~<br><br>~~b)    In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation, and to allow the State to test the alternate CPU or perform maintenance on the designated CPU, as described in 1 c above.~~<br><br>~~c)    When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of notice, Contractor will issue via telephone and/or facsimile/e- mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.~~ | Reject. Contractor must support the system as delivered and accepted, and is responsible for selecting platform software products that can be used to meet the requirements for the system and its support. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (iii)    Fees and Charges<br><br><br>Upon ~~acceptance~~ delivery of Platform Software ~~by~~ to the State, in accordance with ~~Paragraphs 5 herein and~~ the Statement of Work, State will pay the license fee or recurring charge for the Platform Software as set forth in the Statement of work. Charges will commence on the delivery of Platform Software to the State~~Acceptance Date as established in the Statement of Work~~. The Contractor shall render invoices for recurring charges or single charges in the month in which the charges accrue.<br><br>(iv)    Maintenance<br><br>The maintenance and support of any Platform Software products delivered to the State shall be provided pursuant to the terms and conditions of the maintenance and support plans offered by the provider of the Platform Software Product at issue.<br><br><br>a)   ~~The correction of any residual errors in any Platform Software that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without System additional charge for the duration of this contract. Suspected errors discovered by the State Platform Software will be handled by the following procedures:~~<br><br><br>1)  ~~A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.~~ | . |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | 2)   Errors in the Platform Software as verified by Contractor will be corrected by providing a new copy of said Platform Software (or of the affected portions) in machine-readable form. | |
| | 3)   The Contractor shall attempt to correct Platform Software Product errors within a reasonable time. | |
| | b)         Contractor will be responsible for isolating and correcting error conditions caused by the State's particular Hardware or Operating System unless the State has modified or substituted Hardware or Operating System for those components supplied under this contract. If the state has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the Statement of Work. | |
| | c)If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Platform Software, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work. | |
| | (v)       Acceptance of Software | |
| | Any integrated Platform Software for the VoteCal system must be purchased by and licensed to the Contractor. All required licenses purchased by the Prime Contractor | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | ~~shall include written acceptance by the Platform Software provider of the SOS VoteCal IT General Provisions, Appendix A, Attachment 2. Contractor agrees to provide to the SOS this written acceptance and copies of the software licensing agreement(s) no later than implementation acceptance. Implementation acceptance is conditioned upon receipt and approval of these documents. Software licensing terms and conditions provided by Contractor which are not in conflict with the SOS General Provisions, Appendix A, Attachment 2 and/or California law will be accepted by the SOS, provided however that any licensing clause, term or condition representing that the license is superior to or takes precedence over other articles, attachments, specifications, provisions, contracts, terms or conditions shall be stricken and shall have no legal effect. Contractor shall hold all licenses until implementation acceptance. After implementation acceptance, the licenses shall automatically pass to SOS. In the event that Contractor fails to perform on the contract, Contractor shall immediately grant all software licenses to SOS upon request by SOS. SOS reserves the right to waive these requirements on a case-by-case basis, at the SOS's sole discretion, if it is in the best interest of the State.~~ <br><br> ~~(vi)   Right To Copy or Modify~~ <br><br> ~~a)       Any Platform Software provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the state with the designated or alternate CPU.~~ <br><br> ~~b)The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Platform Software to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected. The State may also include the Platform Software in machine-readable form in physical backups of the system that are made to facilitate recovery from hardware failure or from a disaster affecting the designated CPU. These physical backups may be stored both at the site of the designated CPU and at a secure offsite storage facility.~~ | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | ~~c) The State may modify any non-personal computer Platform Software, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this sub-section c) will be construed to contradict the terms of any separate applicable third party license agreement. Any portion of the Platform Software included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.~~ | |
| Attach #1 SOW, page 10 of 18, Addendum #3 | **(b)**     <u>VoteCal System Application Software</u><br><br>Includes any application software developed ~~or otherwise provided~~ by the Contractor to meet the business functional requirements of this contract for the VoteCal Application <u>and any of Contractor's pre-existing software that Contractor delivers to the State pursuant to this Agreement</u>.  This provision does not apply to Platform Software, as described in 9a above, or to the VoteCal EMS Application Software products as described in 9c below.<br><br>    (i)     <u>License Grant</u><br><br>        a) Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, ~~the~~ <u>a</u> nonexclusive, non-transferable, perpetual <u>license</u> ~~right~~ to use, modify and copy the VoteCal System Application Software listed in Statement of Work of this Contract (hereinafter referred to as "VoteCal Application")<u>, all for the State's ordinary, internal purpose of operating and maintaining a State-wide voter registration system</u>.<br><br>        b) State<u>, and any division thereof,</u> may use the VoteCal Application in the conduct of its ~~own business~~<u>ordinary, internal purpose of operating and maintaining a State-wide voter registration system~~, and any division thereof~~</u>. | Reject. SOS wishes to obtain the perpetual right to use and modify the VoteCal application software for any governmental purpose within California, and does not wish to limit that purpose to voter registration. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | c) The license granted above authorizes the State to use the VoteCal Application on any Computer System for the State's ordinary, internal purpose of operating and maintaining a State-wide voter registration system~~for any government purpose in California~~, and to modify the software, or to adapt the software in whole or in part ~~for any government~~ in furtherance of this purpose in California. | |
| | (ii) Encryption/CPU ID Authorization Codes | |
| | The Contractor shall not apply any encryption or CPU ID authorization code capability to the VoteCal Application that in any way restricts the ability of the State to install and use the VoteCal Application on any Hardware or Operating System, nor shall the Contractor apply any mechanism that limits the period of usability of the VoteCal Application. | |
| | (iii) Fees and Charges | |
| | Upon acceptance of the VoteCal Application by State, in accordance with the Statement of Work, State will pay the contracted fees for the development and use of the VoteCal Application. Upon payment of the onetime contracted fee, the license grant to the state will be perpetual without recurring use charges and is not dependent upon the State's continuing to contract for software maintenance of the VoteCal Application. | |
| | (iv) Maintenance | |
| | a) The correction of any residual errors in any VoteCal Application that may be discovered by Contractor or by the State during the first year after acceptance will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (b)    During the period of contracted software maintenance the Contractor will at no additional charge: | |
| | (1)    Correct all errors affecting business functions identified by the State or Contractor in any VoteCal Application Software product. | |
| | (2)    Restore the VoteCal Application Software to performance and functionality equivalent to that of the product when accepted following the installation of any manufacturer-provided security-related maintenance for any other component of the system. | |
| | (c)    Suspected errors discovered by the State in the VoteCal Application Software will be handled by the following procedures: | |
| | (1)    The State will provide the vendor with a clear description of the problem, including the activity performed when the error occurred, the expected outcome, and the unexpected or undesirable outcome obtained. The State will also identify the impact on business processes of the problem, and identify any workaround implemented to mitigate that impact. The State will report the problem using an automated trouble reporting system if provided by the Contractor. | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (2)    Errors in the VoteCal Application Software as verified by the Contractor will be corrected by providing a new copy of both source and object code for said VoteCal Application Software (or of the affected portions) in machine-readable form, along with any instructions for implementing the correction. | |
| | (3)    The Contractor shall attempt to correct VoteCal Application Software errors within a reasonable time. The Contactor will apply its best efforts to correct or provide a reasonable workaround for errors affecting business processes. | |
| | (d)    Contractor will be responsible for isolating and correcting error conditions caused by the State's particular Hardware or Operating System unless the State has modified or substituted Hardware or Operating System for those components supplied under this contract. If the state has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the Statement of Work. | |
| | (e)    If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original system as proposed by the Contractor and delivered under this contract, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work. | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (v)     <u>Acceptance of Software</u><br><br>Acceptance of the VoteCal Application will be governed by the Statement of Work.<br><br>(vi)    <u>Right To Copy or Modify</u><br><br>Upon acceptance and payment for project phase containing the VoteCal Application, there shall be no restriction on the state's ability and right to copy or the VoteCal Application, or on its ability to distribute and install the VoteCal Application<u>, all </u>for <u>the </u>purpose <u>of maintaining and operating a State-wide voter registration system</u> in California.<br><br><br>(vii)    <u>Future Releases</u><br><br>Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of the VoteCal Application Software, or of any <u>of Contractor's </u>software product<u>s</u> identified in the Contractor's Proposal as a basis or component of the VoteCal Application, are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the price offered to other government licensees to upgrade from the version provided to the State to the <u>same </u>version<u> of the product provided to another government licensee</u>.<br><br><br>(viii)    <u>Source code</u><br><br>The Contractor shall turn over the source code, the object code, the complete software release implementation directions, and any additional software that is required to prepare, modify, document, or operate the VoteCal Application Software to SOS.  <u>The State's use of such source code materials will be subject to the limited use license granted above.</u> | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| Attach #1 SOW, page 12 of 18, Addendum #3 | (c)    VoteCal EMS Application Software<br><br>Includes any application software developed ~~or otherwise provided~~ by the Contractor to meet the business functional requirements of this contract for the VoteCal EMS and any of Contractor's pre-existing software included in VoteCal EMS Application Software. This provision does not apply to Platform Software, as described in 9a above, or to the VoteCal System Application Software as described in 9b above.<br><br>(i)    License Grant<br><br>a)    If the State exercises the option to acquire the VoteCal EMS for one or more counties, the Contractor will hereby grant to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, the non-exclusive, non-transferable, perpetual right to use, modify and copy the VoteCal EMS Application Software listed in Statement of Work of this Contract (hereinafter referred to as "VoteCal EMS"), all for the State's ordinary, internal purpose of operating and maintaining a State-wide voter registration system.<br><br>b)    State and any division thereof may use the VoteCal EMS in the conduct of its ordinary, internal purpose of operating and maintaining a State-wide voter registration system~~own business, and any division thereof~~.<br><br>c)    The license granted above authorizes the State to use the VoteCal EMS on any Computer System for each California county for which SOS has exercised the option and paid the fees specified in this contract for that county, for the State's ordinary, internal purpose of operating and maintaining a State-wide voter registration system, and to modify the software, or adapt the software in whole or in part in furtherance of this purpose ~~the any government purpose~~ in those counties. | Reject. SOS wishes to obtain the perpetual right to use and modify the VoteCal application software for any governmental purpose within California, and does not wish to limit that purpose to voter registration. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (ii)    <u>Encryption/CPU ID Authorization Codes</u><br><br>The Contractor shall not apply any encryption or CPU ID authorization code capability to the VoteCal EMS that in any way restricts the ability of the State to install and use the VoteCal EMS on any Hardware or Operating System, nor shall the Contractor apply any mechanism that limits the period of usability of the VoteCal EMS.<br><br>(iii)    <u>Fees and Charges</u><br><br>Upon acceptance of the optional VoteCal EMS by the State, in accordance with the Statement of Work, the State will pay the contracted fees for the use of the VoteCal EMS in one or more counties at the State's option. Upon payment of the onetime contracted fee for every county for which the State chooses to exercise the VoteCal EMS option, the license grant to the state for use by those counties will be perpetual without recurring use charges and is not dependent upon the State's continuing to contract for software maintenance of the VoteCal EMS.<br><br>(iv)    <u>Maintenance</u><br><br>a)    The correction of any residual errors in any VoteCal EMS Application Software that may be discovered by Contractor or by the State during the first year after acceptance will be considered to be maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of the contract.<br><br>b)    During the period of contracted software maintenance, the Contractor will at no additional charge: | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | 1) Correct all errors affecting business functions identified by the State or Contractor in any VoteCal EMS Application Software software product. | |
| | 2) Restore the VoteCal EMS Application Software product to performance and functionality equivalent to that of the product when accepted following the installation of any manufacturer-provided security-related maintenance for any other component of the system. | |
| | c) Suspected errors discovered by the State in the VoteCal EMS Application Software will be handled by the following procedures: | |
| | 1) The State will provide the vendor with a clear description of the problem, including the activity performed when the error occurred, the expected outcome, and the unexpected or undesirable outcome obtained. The State will also identify the impact on business processes of the problem, and identify any workaround implemented to mitigate that impact. The State will report the problem using an automated trouble reporting system if provided by the Contractor. | |
| | 2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of both source and object code for said Software Product (or of the | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | affected portions)in machine-readable form, along with any instructions for implementing the correction.<br><br>3) The Contractor shall attempt to correct VoteCal EMS Application Software errors within a reasonable time. The Contactor will apply its best efforts to correct or provide a reasonable workaround for errors affecting business processes.<br><br>d) Contractor will be responsible for isolating and correcting error conditions caused by any county's particular Hardware or Operating System unless the state or county has modified or substituted Hardware or Operating System for those components specified by the Contractor under this contract. If the county has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the county's particular Hardware or Operating System at rates in accordance with the Statement of Work.<br><br>c) If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original system as proposed by the Contractor and delivered under this contract, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work. | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (v)    <u>Acceptance of Software</u><br><br>Acceptance of the VoteCal EMS Application Software will be governed by the Statement of Work.<br><br>(vi)    <u>Right To Copy or Modify</u><br><br>Upon acceptance and payment for VoteCal EMS Application Software, there shall be no restriction on the state's ability and right to copy or modify the VoteCal EMS, or on its ability to distribute and install the VoteCal EMS Application Software, all for the purpose of maintaining and operating a State-wide voter registration system ~~for government purposes~~ for any county for which the state has exercised the options and paid the associated fees.<br><br>(vii)    <u>Future Releases</u><br><br>Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of the VoteCal EMS Application Software, or of any of Company's software products identified in the Contractor's Proposal as a basis or component of the VoteCal EMS Application Software, are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the price offered to other government licensees to upgrade from the version provided to the State to the same version of the product provided to another government licensee~~new version~~. | Reject: Not to be limited to the "company's" software. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | (viii)    Source code<br><br><br>The Contractor shall turn over the source code, the object code, the complete software release implementation directions, and any additional software that is required to prepare, modify, document, or operate the VoteCal EMS Application Software to SOS.  The State's use of such source code materials will be subject to the limited use license granted above | |
| Attach #1 SOW, page 15 of 18, Addendum #3 | (c)    Liquidated Damages<br><br><br>It is agreed by the State and the Contractor that in the event of failure to meet the requirements which follow, damage shall may be sustained by the State and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the State will sustain in the event of and by reason of such failure; and it is therefore agreed that the Contractor will pay the State the amounts set forth below for such failures at the sole discretion of the State according to the following | Reject: Delay shall cause direct damage to the state by extending the time it must contract for project support and oversight services; the amount set in this section is based on those potential costs.  SOS does; however, agree to cap the liquidated damages at $1,000,000. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | subsection. The purpose of liquidated damages is to ensure adherence to the requirements in the contract. No punitive intention is inherent.<br><br>Additionally, time is of the essence in the contract. It is the State's intent to meet the VoteCal Project Final Implementation Date as specified in the project schedule at the time of award. If for any reason the Contractor is delayed in meeting the Final Implementation Date, Liquidated Damages in the amount of two thousand five hundred dollars ($2500) per working day may be assessed for each working day the Final Implementation Date is delayed; provided, however, that in no event shall the total liquidated damages assessed exceed $225,000. The State will notify the Contractor, in writing when Liquidated Damages are being invoked. The State will provide the contractor a complete accounting for all Liquidated Damages. | |
| Attach #1 SOW, page 15 of 18, Addendum #3 | The liquidated damages are set at $2,500 per working day that the Final Implementation Date is delayed.  Please establish a cap on the amount of liquidated damages. | See above |
| Attach #2 IT General Provisions Page 8 of 21 | **18. WARRANTY:**<br><br>a. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) other than generally available third-party hardware and software products, the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, wWhere the Contract calls for delivery of Commercial Software from third-party software providers, the only warranty provided in connection with such software will be the warranty provided | Reject. The Contractor must agree to warrant the complete delivered system to meet and maintain required functionality and performance.  The contractor must select third-party products that are appropriate to that warranty. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | by the third-party software provider. ~~, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation.~~ The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty. | |
| | b. Contractor warrants that Deliverables furnished hereunder (i) will have been tested, using commercially reasonable practices, prior to delivery, and the results of those tests will have shown the Deliverables to be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction. | |
| | c. Unless otherwise specified in the Statement of Work: | |
| |     i. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption. | |
| |     ii. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State. | |
| |     iii. Where Contractor resells Hardware or Software it purchased from a third party, ~~and such third party offers additional or more advantageous warranties than those set forth herein,~~ Contractor will pass through any ~~such~~ warranties obtained from such third party to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be ~~supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above~~the exclusive warranty provided in connection with the operation of such third-party Hardware or Software. | |
| | d. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services. | |
| | e. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section other than third-party warranties, the State's exclusive remedy and Contractor's sole | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | obligation will be limited to: | |
| | i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or | |
| | ii. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability." | |
| | f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. | |
| Attach #2 IT General Provisions Page 9 of 21 | **20. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all the commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contractdescribed in Addendum _____. Contractor shall furnish standard Accord an insurance certificates evidencing the required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on Contractor's selected general liability and auto insurance policies. | Reject: Insurance requirements will be defined in Section V of the RFP in the next Addendum. |
| Attach #2 IT General Provisions Page 9 of 21 | Please provide a list of the insurance minimums that "the State deems appropriate under the Contract." (Quoting from Clause 20) | See above |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| Attach #2 IT General Provisions Page 10 of 21 | **22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**<br><br>a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.<br><br>b. After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:<br><br>i. Stop work as specified in the Notice of Termination.<br><br>ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.<br><br>iii. Terminate all subcontracts to the extent they relate to the work terminated.<br><br>iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;<br><br>c. Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:<br><br>i. The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and<br><br>ii. The total of:<br><br>A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;<br><br>B. The reasonable profits Contractor would have realized on the work performed prior to termination, had the Contractor been | Reject. SOS does not believe that "reasonable profits" can be determined or agreed. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | allowed to complete the contract; | |
| | ~~B~~C. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and | |
| | ~~C~~D. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work. | |
| | d. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause. | |
| Attach #2 IT General Provisions Page 10 of 21 | **26. LIMITATION OF LIABILITY:** | |
| | a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to ~~two times~~ the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order. | Accept. SOS agrees to reduce the limitation of liability to the purchase price. |
| | b. The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; or (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct~~; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action~~. | Reject. The SOS will not waive its rights to awarded attorney's fees. |
| | c. The State's liability for damages for any cause whatsoever, and regardless of | |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| | the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.<br><br>d. In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i) or, b)(ii), or b)(iv) above. | |
| Attach #2 IT General Provisions Page 12 of 21 | **28. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, to the extent such claims or losses result resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies through Contractor, at its request, or under its control, in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:<br><br>a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and<br><br>b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations. | Reject: Contractor is responsible for its agents, etc. This responsibility is not limited to acts at the contractors "request, or under its control." |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| Attach #2 IT General Provisions Page 14 of 21 | **37. RIGHTS IN WORK PRODUCT:**<br><br>a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.<br><br>b. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.<br><br>c. The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder, as defined and set forth in the Statement of Work. [Please see requested changes to definition of "Government Purpose Rights" below]<br><br>d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.<br><br>e. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.<br><br>f. Effective upon final system acceptance, the State grants Contractor a non-exclusive, non-transferable right to use, sublicense, resell, modify and maintain any intellectual property created by Contractor pursuant to this Agreement in which the State obtains an ownership interest. | Reject: Government purpose rights were deleted with Addendum #3; the conforming changes to the contract language will be made in a subsequent addendum.<br><br><br><br>Reject. SOS will acquire a perpetual license to use and modify the delivered software; it will not obtain ownership of the intellectual property. |

| Appendix A Location | Requested Change | SOS Comment |
|---|---|---|
| Attach #2 IT General Provisions Page 14 of 21 | **38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**<br><br>a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's ~~exclusive~~ use **exclusively** for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.<br><br>b. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.<br><br>c. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data. | Accept change. |